IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.106/2003
AND
CIVIL APPLICATION NO.102/2003

Kadamba Transport
Corporation Ltd., a Company
having their Registered
Office at KTCL Bus Stand,
Panaji, Goa, represented
herein by their Managing
Director Shri Arun L. Desai. ..... Appellant.

V/s.

1. Smt. Isabela Maria
Cardozo, widow of late
Antonio Cardozo, r/o.
H.No.54, Zuzegal, Cuncolim,
Salcete, Goa.

2. Mr. Suryakant Sawant,
major, s/o. Pandurang
Sawant, r/o. Sawantwado,
Mandrem, Goa. ..... Respondents.

Mr. Ajit R. Kantak, Advocae for the appellant.

CORAM: F.I. REBELLO, J.

DATE: JUNE 19, 2003

ORAL ORDER :

Considering the limited controversy, at the stage of admission itself record and proceedings of first appeal were called for. Record and Proceedings are now before the Court.

2. This is an appeal by the State Transport Corporation whose vehicle met with an accident resulting consequently in the death of the husband of respondent No.1 herein. Respondent No.1 was the claimant. The

Claims Tribunal, by its Order dated 18.11.2002, was pleased to award a sum of Rs. 1,60,000/- as just compensation which the respondents therein were ordered to pay jointly and severally with future interest at the rate of 8.5 % per annum. The Tribunal also awarded costs. Apart from that, there was a direction to adjust the amount paid under the no fault liability. It is this Award which is subject matter of the present appeal.

3. Various grounds have been taken by the appellant before this Court. The first major contention advanced was that respondent No.1 was unable to prove the income that the deceased was earning at the time of the accident and in these circumstances, the learned Tribunal was wrong in working out the dependency at Rs.1500/- per month. It is next contended that the learned Tribunal misdirected itself in applying the multiplier of 8, as in the claims statement itself the claimant had disclosed her age as 65 years. It is contended that the learned Claims Tribunal, therefore, erred in law in holding the age of the claimant to be 58 years at the time of the accident and, therefore, had applied wrong multiplier. It is, therefore, contended that the Award is liable to be set aside.

4. In so far as the income of the deceased is

concerned, the claimant examined herself and another witness by name Joe Fernandes. In her evidence, the claimant has deposed that her late husband was working as an electrician and was earning Rs.4,000/- per month. The claimant also deposed that her husband was previously working in Bombay as an electrician in a company and he was working for Jaihind Company at Bhandup. She, however, in her cross examination stated that she was unable to produce any document to show that he was working for the said company or that her husband was an electrician. She denied that he was not an electrician.

Joe Fernandes, CW.3 has deposed that the deceased Antonio was working as an electrician and he was going along with him as a helper. It is next stated by him that he was being paid Rs.70/- per day and he had worked with him as helper for about one and half year. He hs stated that he did not have anything in writing to show that he was working with the deceased. He has, however, stated that he knows the electrical work and he knew the deceased in Bombay. Nothing was put to this witness that Antonio was not working as an electrician with Jaihind Company or that Antonio was not knowing the electrical work. The only question put in cross examination was that he did not work along with said Antonio. The appellants themselves did not examine any

witness, except for the driver that is also on the aspect of rash and negligent driving which has really not been argued.

In its Award, while answering the issue No.3 in the matter of compensation, the learned Claims Tribunal accepted the evidence of CW.3 and on that basis held that if CW.3 was earning Rs.70/- per day, the deceased himself at least should be earning Rs.100/- per day and on that basis, worked out the compensation. It cannot be said that the view taken by the learned Claims Tribunal was improper considering the bare denials put by the appellant herein to the witness and in the absence of any evidence to the contrary, led on behalf of the appellant. It is, therefore, not possible to interfere with the dependency as worked out by the Claims Tribunal

5. Now coming to the second contention, namely the multiplier, in its finding recorded and specifically on issues no.2 and 3, the learned Tribunal relied on the birth certificate of the deceased wherein date of birth was shown as 16.10.1939 and held that at the time of the accident, therefore, he would be 61 years of age. The sole contention on behalf of the appellant is that in the claims statement, respondent No.1 herself had given her age as 65 years. In her deposition, she has given

her age as 60 years. On behalf of the appellant, no question was put to the witness as to the age as set out by her in her claims statement and the age as given by her in her evidence. In the absence of seeking any explanation, what has to be accepted is the evidence of her that she was aged 60 years and this would be more probable considering that the husband himself at the time of his death was 61 years. In all probability it could be a typing error in typing the age in the claims statement, and that cannot be ruled out. At any rate, if the appellant seeks to rely on the statement given by the claimant about the age in the claims statement, she ought to have been called upon to explain the same in her evidence. That was not done and in the absence of that, it must be accepted that the finding recorded by the learned Tribunal is based on the material evidence. Once that be the case, applying multiplier of eight cannot be faulted with and in that light of the matter, I find no merit in this appeal.

In the light of that, the appeal is liable to be dismissed. Civil Application stands rejected.

F.I. REBELLO, J.

ssm.